

AMENDED IN ASSEMBLY APRIL 20, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2138**

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**Introduced by Assembly Members Low and Bonta**

February 17, 2016

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~~An act to add and repeal Chapter 18 (commencing with Section 9400) of Division 3 of the Business and Professions Code, relating to tour guides. An act to amend Section 17550.20 of the Business and Professions Code, relating to business.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2138, as amended, Low. ~~Tour guides; regulation. Sellers of travel.~~  
*Existing law regulates sellers of travel, as defined, and requires their registration with the Attorney General. Under existing law, a seller of travel is deemed to do business in this state if the seller of travel solicits business from locations in this state or solicits prospective purchasers who are located in this state.*

*This bill would clarify that a seller of travel is deemed to do business in this state if the seller of travel solicits business from locations in this state regardless of the geographic location of the prospective purchaser including persons located outside of this state or the country.*

~~Existing law provides for the licensure and regulation of various professionals, including, but not limited to, contractors, attorneys, interior designers, barbers, and cosmetologists.~~

~~This bill would provide for the certification and regulation of tour guides, as defined, by the California Tour Guide Council and would provide for the creation of the council as a nonprofit organization, as specified. The bill would require applicants for certification to, among other things, be 18 years of age or older, meet specified educational~~

criteria, pay fees required by the council, and provide fingerprints for submission to the Department of Justice for a criminal background check. The act would require the department to review specified information and provide fitness determinations and other specified information to the council.

~~This bill would allow the organization to take disciplinary action against certificate holders or applicants, as specified. The bill would make it an unfair business practice for an uncertified person to, among other things, state, advertise, or represent that he or she is a certified tour guide or for a tour guide business to provide tour guiding services in California if those services are not performed by a certified tour guide. The bill would authorize the Public Utilities Commission to enforce these provisions.~~

~~This bill would state that this is a matter of statewide concern and would prohibit a city, county, or city and county from enacting an ordinance regulation that conflicts with the requirements of the bill.~~

~~The bill would repeal these provisions on January 1, 2018.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 17550.20 of the Business and Professions  
2     Code is amended to read:  
3     17550.20. (a) Not less than 10 days prior to doing business in  
4     this state, a seller of travel shall apply for registration with the  
5     office of the Attorney General by filing with the Consumer Law  
6     Section the information required by Section 17550.21 and a filing  
7     fee of one hundred dollars (\$100) for each location from which  
8     the seller of travel conducts business. A late fee of five dollars  
9     (\$5) per day, up to a maximum of five hundred dollars (\$500),  
10    shall be paid for each day after the time specified by this section  
11    until the filing fee and the information required by Section  
12    17550.21 are received. No registration shall be issued or approved  
13    until the late fee, and the filing and late fees for each year the seller  
14    of travel operated without being registered, have been paid. A  
15    seller of travel shall be deemed to do business in this state if the  
16    seller of travel solicits business from locations in this state  
17    *regardless of the geographic location of the prospective purchaser*

1 *including persons located outside of this state or the country or*  
2 *solicits prospective purchasers who are located in this state.*

3 (b) Registration shall be valid for one year from the effective  
4 date thereof shown on the registration issued by the office of the  
5 Attorney General and may be annually renewed by making the  
6 filing required by Section 17550.21 and paying a filing fee of one  
7 hundred dollars (\$100) for each location from which the seller of  
8 travel conducts business. A late fee of five dollars (\$5) per day,  
9 up to a maximum of five hundred dollars (\$500), shall be paid for  
10 each day after the time specified by this section until the filing fee  
11 and the information required by Section 17550.21 are received.  
12 No registration shall be renewed until the late fee, and the filing  
13 and late fees for each year the seller of travel operated without  
14 being registered, have been paid.

15 (c) Whenever, prior to expiration of a seller of travel's annual  
16 registration, there is a material change in the information required  
17 by Section 17550.21, the seller of travel shall, within 10 days, file  
18 an addendum updating the information with the Consumer Law  
19 Section of the office of the Attorney General.

20 (d) (1) Not less than 10 days prior to the transfer or sale of any  
21 interest in a seller of travel, the selling or transferring owner shall  
22 file with the office of the Attorney General, Seller of Travel  
23 Program, a notice of encumbrance, sale, or transfer of ownership,  
24 using a form provided for that purpose by the office of the Attorney  
25 General. The notice shall provide the information required pursuant  
26 to subdivision (d) of Section 17550.21 as to each transferee.

27 (2) Until the time the notice of encumbrance, sale, or transfer  
28 of ownership required in paragraph (1) is filed as required, the  
29 selling, encumbering, or transferring owner is responsible for all  
30 acts of and obligations imposed by law on the transferee sellers of  
31 travel to the same extent as they would have been responsible had  
32 there been no transfer, sale, or encumbrance.

33 (e) The office of the Attorney General shall suspend the  
34 registration of any seller of travel who (1) fails to make any  
35 payment required pursuant to Article 2.7 (commencing with  
36 Section 17550.35) or (2) submits a check in payment of a  
37 registration fee or late fee required by this section that is not  
38 honored by the institution on which it is drawn. The Attorney  
39 General shall provide written notice to the seller of travel by  
40 first-class mail at the seller of travel's place of business set forth

1 in the registration statement that the seller of travel's registration  
2 has been suspended until all fees that are due have been paid. The  
3 registration of the seller of travel shall be suspended until all such  
4 payments due have been collected.

5 (f) The Attorney General may, at his or her discretion and  
6 subject to supervision by the Attorney General or his or her  
7 delegate, contract out all or any part of the processing of  
8 registrations required by this section.

9 (g) This section does not apply to an individual, natural person  
10 who meets all of the following conditions:

11 (1) Has a written contract with a registered seller of travel to  
12 act on that registered seller of travel's behalf in offering or selling  
13 air or sea transportation and other travel goods or services in  
14 connection with the transportation.

15 (2) Acts only on behalf of a registered seller of travel with whom  
16 the person has a written contract in the offer or sale to a passenger  
17 of air or sea transportation and other goods or services in  
18 connection with the transportation and sells no other air or sea  
19 transportation or travel services to that passenger.

20 (3) Provides air or sea transportation or travel services that are  
21 offered or sold pursuant to the official agency appointment of the  
22 registered seller of travel with whom the person has a written  
23 contract.

24 (4) Does not receive any consideration for air or sea  
25 transportation or other travel services from the passenger.

26 (5) Requires the passenger to pay all consideration for air or  
27 sea transportation or other travel services directly to the air carrier  
28 or ocean carrier or to the registered seller of travel.

29 (6) Discloses both of the following:

30 (A) The person is acting on behalf of a registered seller of travel.

31 (B) The name, address, telephone number, and registration  
32 number of the registered seller of travel on whose behalf the person  
33 is acting.

34 The person shall make the disclosures required by this paragraph  
35 in writing to the passenger at the same time the passenger receives  
36 notice under Section 17550.13. If the person transacts business in  
37 this state on the Internet, the disclosures also shall appear on the  
38 home page of the person's Web site and shall be prominently set  
39 forth in the first electronic mail message sent to the passenger that

1 refers to the passenger's purchase of air or sea transportation or  
2 travel services.

3 (h) Whenever the Attorney General determines that a registration  
4 application is accurate and complete, the application shall be  
5 processed and a registration certificate shall be issued to the seller  
6 of travel within 21 days.

7 ~~SECTION 1. It is the intent of the Legislature that this act~~  
8 ~~create a self-funded, nonprofit statewide oversight and regulatory~~  
9 ~~program called the California Tour Guide Council to test and~~  
10 ~~certify tour guide professionals who deliver sightseeing~~  
11 ~~commentary within the State of California. This program will~~  
12 ~~enable consumers to identify and benefit from tour guides who are~~  
13 ~~credible, knowledgeable, and safety-conscious and who, as~~  
14 ~~unofficial "ambassadors" of our state, will present California's~~  
15 ~~assets to visitors in an accurate, unbiased, and insightful manner.~~  
16 ~~It will require tour guides to pass an examination that tests them~~  
17 ~~on their knowledge of facts of interest about California, as well as~~  
18 ~~on safety and security issues related to the tour experience. To~~  
19 ~~bring added value to the program, the council shall publish an~~  
20 ~~online directory of all Certified California Tour Guides, available~~  
21 ~~to both consumers and businesses for reference, and provide other~~  
22 ~~benefits to tour guides. Finally, certification will bring recognition,~~  
23 ~~credibility, and a sense of personal achievement to our state's tour~~  
24 ~~guides.~~

25 ~~SEC. 2. Chapter 18 (commencing with Section 9400) is added~~  
26 ~~to Division 3 of the Business and Professions Code, to read:~~

27  
28 ~~CHAPTER 18. CALIFORNIA TOUR GUIDE ACT~~  
29

30 ~~9400. This chapter shall be known and may be cited as the~~  
31 ~~California Tour Guide Act.~~

32 ~~9401. For purposes of this chapter, the following terms have~~  
33 ~~the following meanings:~~

34 ~~(a) "Certificate" means a valid certificate issued by the council~~  
35 ~~pursuant to this chapter.~~

36 ~~(b) "Compensation" means anything of value, including, but~~  
37 ~~not limited to, a payment, loan, advance, donation, contribution,~~  
38 ~~deposit, or gift of money.~~

39 ~~(c) "Council" means the California Tour Guide Council created~~  
40 ~~pursuant to this chapter, which shall be a nonprofit organization~~

1 exempt from income taxation as an organization described in  
2 Section 501(c)(3) of the Internal Revenue Code. It may commence  
3 activities pursuant to this chapter once the council has submitted  
4 an application to the Internal Revenue Service seeking this  
5 exemption.

6 (d) “Tour guide” means a person who provides sightseeing  
7 commentary, who is certified by the council pursuant to this  
8 chapter, and who practices tour guiding for compensation.  
9 Excluded from this definition are guides who give tours at  
10 museums, state or national parks, attractions, theme parks, private  
11 and government facilities, and similar places of interest and who  
12 are employees of these specific places. Though these tour and  
13 travel-related employees are not required to be certified, they will  
14 be strongly encouraged to apply for certification and take the  
15 examination, as may any qualified resident of the State of  
16 California.

17 (e) “Tour manager” means a person who manages a group’s  
18 logistics and itinerary-related factors over a multiday tour. Other  
19 industry-accepted titles for a tour manager include tour conductor,  
20 tour courier, tour escort, tour director, or tour leader.

21 (f) “Tour operator” or “tour guide business” means a business  
22 or establishment that provides or employs tour guides in California  
23 for compensation.

24 9402. (a) The California Tour Guide Council is hereby created  
25 and shall have the responsibilities and duties set forth in this  
26 chapter. The council may take any reasonable actions necessary  
27 to carry out the duties and responsibilities set forth in this chapter,  
28 including, but not limited to, hiring staff and entering into contracts.

29 (b) The council shall be governed by a board of directors  
30 comprised of the following members:

31 (1) Two actively working tour guides collectively selected by  
32 each professional society, association, or other entity that chooses  
33 to participate in the council and meets all of the following criteria:

34 (A) Is comprised of tour guides and other tour-related  
35 professionals.

36 (B) Has sustained a membership of at least 100 dues-paying  
37 individuals in California for the previous three years.

38 (C) Has bylaws that require members to comply with a code of  
39 ethics.

1     ~~(2) Two members who are employees or are independent~~  
2 ~~contractors employed by a California-based tour operator to give~~  
3 ~~sightseeing commentary.~~

4     ~~(3) One member selected by an accredited public or private high~~  
5 ~~school, college, or similar institution in California that chooses to~~  
6 ~~participate in the council and that offers at least one course in its~~  
7 ~~curriculum that focuses on the tour segment of the travel industry~~  
8 ~~and the role of a tour guide in the tour process.~~

9     ~~(4) One member selected by the League of California Cities,~~  
10 ~~unless the league chooses not to exercise this right of selection.~~

11     ~~(5) One member selected by the California State Association~~  
12 ~~of Counties, unless the association chooses not to exercise this~~  
13 ~~right of selection.~~

14     ~~(6) One member selected by the Director of Consumer Affairs,~~  
15 ~~unless the department chooses not to exercise this right of selection.~~

16     ~~(7) The council's bylaws shall establish a process for appointing~~  
17 ~~other professional directors as determined by the board.~~

18     ~~(e) Board member terms shall be for three years.~~

19     ~~(d) The initial board of directors shall establish the council,~~  
20 ~~initiate the application for tax-exempt status from the Internal~~  
21 ~~Revenue Service, and solicit input from the tour guide community~~  
22 ~~concerning the operations of the council.~~

23     ~~(e) The initial board of directors, in its discretion, may~~  
24 ~~immediately undertake to issue the certificates authorized by this~~  
25 ~~chapter after adopting the necessary bylaws or other rules or may~~  
26 ~~establish, by adoption of bylaws, the permanent governing structure~~  
27 ~~of the council prior to issuing certificates.~~

28     ~~(f) The board of directors shall establish membership fees not~~  
29 ~~to exceed the reasonable cost of providing services and carrying~~  
30 ~~out the board's ongoing duties and responsibilities pursuant to this~~  
31 ~~chapter and annually establish the initial renewal fees for~~  
32 ~~certificates.~~

33     ~~(g) The meetings of the council shall be subject to the rules of~~  
34 ~~the Bagley-Keene Open Meeting Act (Article 9 (commencing with~~  
35 ~~Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of~~  
36 ~~the Government Code).~~

37     ~~9406. In order to obtain certification as a tour guide~~  
38 ~~professional, an applicant shall fill out an application form and~~  
39 ~~provide the council with satisfactory evidence that he or she meets~~  
40 ~~all of the following requirements:~~

1     ~~(a) The applicant is 18 years of age or older.~~

2     ~~(b) The applicant has passed a California tour guide competency~~  
3 ~~assessment examination whose content will be based primarily on~~  
4 ~~a California Tour Guide Study Manual created by the council. This~~  
5 ~~online document will be viewable or downloadable as a PDF file~~  
6 ~~and will meet generally recognized principles and standards that~~  
7 ~~are approved by the council. It will focus on California geography,~~  
8 ~~history, attractions, cultural diversity, significant events, places of~~  
9 ~~interest, notable persons, environmental issues, and similar topics.~~  
10 ~~It will also address safe and secure tour operations. It will not cover~~  
11 ~~best-practice topics such as efficient tour operation and tour-related~~  
12 ~~routines and practices, how to deliver effective commentary, and~~  
13 ~~similar content. The examination and study guide will be updated~~  
14 ~~on a quarterly basis.~~

15     ~~(1) The test will be, except as provided in subdivision (b) of~~  
16 ~~Section 9410, administered online. Each online test will be~~  
17 ~~composed of questions randomly selected from a large database~~  
18 ~~of test questions, so that each test will be unique to the applicant~~  
19 ~~for certification. The exam will focus on California, with a general~~  
20 ~~state emphasis.~~

21     ~~(2) Applicants will be permitted to take the exam no more than~~  
22 ~~three times per year: one test and two re-tests within 12 months~~  
23 ~~of having taken the first test. The successful completion of this~~  
24 ~~examination may have been accomplished before the date the~~  
25 ~~council is authorized by this chapter to begin issuing certificates.~~

26     ~~(c) The applicant must be a United States citizen or legal resident~~  
27 ~~and must reside in the State of California.~~

28     ~~(d) All fees required of the applicant by the council have been~~  
29 ~~paid, either by the applicant or the employer or a combination of~~  
30 ~~both.~~

31     ~~9408. Any certificate issued pursuant to this chapter shall expire~~  
32 ~~after two years unless renewed in a manner prescribed by the~~  
33 ~~council. The council may, in some cases, provide for the late~~  
34 ~~renewal of a certificate.~~

35     ~~9409. A certified guide will be given and must wear a~~  
36 ~~state-issued photo identification badge, visible to the public at all~~  
37 ~~times, while conducting a sightseeing tour.~~

38     ~~9410. (a) A school, association, business, or similar institution~~  
39 ~~that wishes to offer a test-preparation course for potential applicants~~  
40 ~~for the California Tour Guide Certification Test must first obtain~~



1 approval from the council, pay a fee to the council, which shall be  
2 determined by the council, complete an application form provided  
3 by the council, and attach a lesson plan. Applicants to offer a  
4 test-prep course must be one of the following:

5 (1) A school approved by the Bureau for Private Postsecondary  
6 Education.

7 (2) A school approved by the Department of Consumer Affairs.

8 (3) A school accredited by the Accrediting Commission for  
9 Senior Colleges and Universities or the Accrediting Commission  
10 for Community and Junior Colleges of the Western Association  
11 of Schools and Colleges and that is any of the following:

12 (A) A public institution.

13 (B) An institution incorporated and lawfully operating as a  
14 nonprofit public benefit corporation pursuant to Part 2  
15 (commencing with Section 5110) of Division 2 of Title 1 of the  
16 Corporations Code and that is not managed by any entity for profit.

17 (C) A not-for-profit institution that employs or educates tour  
18 guides.

19 (D) A for-profit institution or business that employs or educates  
20 tour guides.

21 (E) A college or university of the state higher education system,  
22 as defined in Section 100850 of the Education Code.

23 (b) Notwithstanding paragraph (1) of subdivision (b) of Section  
24 9406, the council may, under special circumstances, authorize an  
25 organization or business which is approved to give a test-prep  
26 study course, to administer a certification test at the completion  
27 of the course, but only in a “live” setting and with a monitor  
28 authorized by the council in attendance.

29 (c) For purposes of this section and any other provision of this  
30 chapter that authorizes the council to receive factual information  
31 as a condition of taking action, the council may conduct oral  
32 interviews of the applicant and others or conduct any investigation  
33 the council deems necessary to establish that the information  
34 received is accurate and satisfied the criteria established by this  
35 chapter.

36 (d) The council may also authorize any institution within the  
37 categories under subdivision (a) of Section 9410 to offer an  
38 advanced level program of studies to tour guides that have been  
39 certified that addresses topics that the California certification

1 program does not, such as consumers needs, delivering effective  
2 commentary, cultural factors, and similar topics.

3 ~~(e) Institutions wishing to offer this advanced program must~~  
4 ~~first obtain approval from the council, pay a fee to be determined,~~  
5 ~~complete an application form, attach a lesson plan, and satisfy any~~  
6 ~~other requirements, as determined by the council. Tour guides who~~  
7 ~~suecessfully complete this advanced program shall be awarded the~~  
8 ~~status of “Master Guide” by the council, which will be displayed~~  
9 ~~on their identification badge and indicated on the council’s Internet~~  
10 ~~Web site.~~

11 ~~9412. (a) Before issuing a certificate to an applicant or~~  
12 ~~designating a custodian of records, the council shall require the~~  
13 ~~applicant or the custodian of records candidate to submit fingerprint~~  
14 ~~images as directed by the council and in a form consistent with~~  
15 ~~the requirements of this section.~~

16 ~~(b) The council shall submit the fingerprint images and related~~  
17 ~~information to the Department of Justice for the purpose of~~  
18 ~~obtaining information as to the existence and nature of a record of~~  
19 ~~state and federal level convictions and of state and federal level~~  
20 ~~arrests for which the Department of Justice establishes that the~~  
21 ~~applicant or candidate was released on bail or on his or her own~~  
22 ~~recognizance pending trial.~~

23 ~~(c) Requests for federal level full background check received~~  
24 ~~by the Department of Justice pursuant to this section shall be~~  
25 ~~forwarded to the Federal Bureau of Investigation by the Department~~  
26 ~~of Justice. The Department of Justice shall review the information~~  
27 ~~returned from the Federal Bureau of Investigation and shall compile~~  
28 ~~and disseminate a fitness determination regarding the applicant or~~  
29 ~~candidate to the council. The Department of Justice shall provide~~  
30 ~~information to the council pursuant to subdivision (p) of Section~~  
31 ~~11105 of the Penal Code.~~

32 ~~(d) The Department of Justice and the council shall charge a~~  
33 ~~fee not to exceed the reasonable cost of processing the request for~~  
34 ~~state and federal level full background check.~~

35 ~~(e) The council shall request subsequent arrest notification~~  
36 ~~service from the Department of Justice, as provided under Section~~  
37 ~~11105.2 of the Penal Code, for all applicants for certification or~~  
38 ~~custodian of records candidates for whom fingerprint images and~~  
39 ~~related information are submitted to conduct a search for state and~~  
40 ~~federal level full background check.~~

1     ~~9413. The council may require all employees, volunteers, and~~  
2 ~~board members to undergo the background investigation process~~  
3 ~~described in Section 9412.~~

4     ~~9415. It is a violation of this chapter and ground for discipline~~  
5 ~~or denial of an application for a certificate if a certificate holder~~  
6 ~~or applicant commits any of the following acts:~~

7     ~~(a) Unprofessional conduct.~~

8     ~~(b) Procuring a certificate by fraud, misrepresentation, or~~  
9 ~~mistake.~~

10    ~~(c) Impersonating an applicant or acting as a proxy for an~~  
11 ~~applicant in any examination referred to in this chapter for the~~  
12 ~~issuance of a certificate.~~

13    ~~(d) Impersonating a certificate holder, or permitting or allowing~~  
14 ~~a noncertified person to use a certificate.~~

15    ~~(e) Violating or attempting to violate, directly or indirectly, or~~  
16 ~~assisting in or abetting the violation of, or conspiring to violate~~  
17 ~~any provision of this chapter or any rule or bylaw adopted by the~~  
18 ~~council.~~

19    ~~(f) Committing any fraudulent, dishonest, or corrupt act that is~~  
20 ~~substantially related to the qualifications or duties of a certificate~~  
21 ~~holder.~~

22    ~~(g) Committing any act punishable as a sexually related crime.~~

23    ~~(h) Being convicted of any felony or misdemeanor that is~~  
24 ~~substantially related to the qualifications, functions, or duties of a~~  
25 ~~certificate holder. A record of the conviction shall be conclusive~~  
26 ~~evidence of the crime.~~

27    ~~9416. (a) The council may discipline a certificate holder by~~  
28 ~~any of the following methods, including any combination of the~~  
29 ~~following:~~

30    ~~(1) Placing the certificate holder on probation.~~

31    ~~(2) Suspending the certificate and the right conferred by this~~  
32 ~~chapter on a certificate holder for a period not to exceed one year.~~

33    ~~(3) Revoking the certificate.~~

34    ~~(4) Suspending or staying the disciplinary order, or portions of~~  
35 ~~it, with or without conditions.~~

36    ~~(5) Taking other actions as the council deems proper, as~~  
37 ~~authorized by this chapter or the council's bylaws.~~

38    ~~(b) The council may issue an initial certificate on probation,~~  
39 ~~with specific terms and conditions, to any applicant.~~

~~(e) (1) Notwithstanding any other law, if the council receives notice that a certificate holder has been arrested and charges have been filed by the appropriate prosecuting agency against the certificate holder alleging a violation of subdivision (b) of Section 647 of the Penal Code or any other offense described in subdivision (g) of Section 9415, the council shall take all of the following actions:~~

~~(A) Immediately suspend, on an interim basis, the certificate of that certificate holder.~~

~~(B) Within 10 business days, notify the certificate holder at the address last filed with the council that the certificate has been suspended and the reason for the suspension.~~

~~(C) Within 10 business days, notify any business that the council's records list as employing the certificate holder that the certificate has been suspended and the reason for the suspension.~~

~~(2) Upon notice to the council that the charges described in paragraph (1) have resulted in a conviction, the suspended certificate shall become subject to permanent revocation. The council shall provide notice to the certificate holder within 10 business days that it has evidence of a valid record of conviction and that the certificate will be revoked unless the certificate holder provides evidence within 15 days from the mailing date of the notice that the conviction is either invalid or that the information is otherwise erroneous.~~

~~(3) Upon notice that the charges described in paragraph (1) have resulted in an acquittal or have otherwise been dismissed prior to conviction, the council shall immediately reinstate the certificate and notify the certificate holder and any business that received notice pursuant to subparagraph (C) of paragraph (1) of the reinstatement within 10 business days.~~

~~9417. (a) An applicant for a certificate shall not be denied a certificate, and a certificate holder shall not be disciplined pursuant to this chapter, except according to procedures that satisfy the requirements of this section. Denial or discipline that is not in accordance with subdivision (e) of Section 9416 shall be void and without effect.~~

~~(b) Any denial of discipline shall be decided upon and imposed in good faith and in a fair and reasonable manner. Any procedure that conforms to the requirements of subdivision (e) is fair and reasonable, but a court may find other procedures to be fair and~~

1 reasonable when the full circumstances of the denial or discipline  
2 are considered.

3 (e) A procedure is fair and reasonable if the procedures specified  
4 in subdivision (c) of Section 9416 are followed or if all of the  
5 following apply:

6 (1) The provisions of the procedure are set forth in the articles  
7 of bylaws of the council or copies of those provisions are annually  
8 sent to all of the members of the council.

9 (2) The procedure provides 15 business days' prior notice of  
10 the denial or discipline and the reasons for the denial or discipline.

11 (3) The procedure provides an opportunity for the applicant or  
12 certificate holder to be heard, orally or in writing, not less than  
13 five days before the effective date of the denial or discipline, by  
14 a person or body authorized to decide whether the proposed denial  
15 or discipline should go into effect.

16 (d) (1) Any notice required under this section may be given by  
17 any method reasonably calculated to provide actual notice. Any  
18 notice given by mail shall be given by first-class or certified mail  
19 sent to the last address of the applicant or certificate holder shown  
20 on the council's records.

21 (2) It is the responsibility of the certificate holder or applicant  
22 to notify the council of his or her home address, as well as the  
23 address of any business establishment where he or she regularly  
24 works as a tour guide professional, whether as an employee or as  
25 an independent contractor.

26 (e) A certificate holder or applicant who is denied or disciplined  
27 shall be liable for any charges, dues, assessments, and fees incurred  
28 by, services or benefits actually rendered to and obligations arising  
29 from contract or otherwise of, the certificate holder or applicant  
30 before the denial or discipline.

31 (f) Any action challenging a denial or discipline, including any  
32 claim alleging defective notice, shall be commenced within one  
33 year after the effective date of the denial or discipline. If the action  
34 is successful, the court may order any relief, including  
35 reinstatement, that it finds equitable under the circumstances.

36 (g) This section governs only the procedures for denial or  
37 discipline decision and not the substantive grounds for the denial  
38 or discipline. Denial or discipline based upon substantive grounds  
39 that violates contractual or other rights of the applicant or certificate

holder, or is otherwise unlawful, is not made valid by compliance with this section.

9419. (a) Upon the request of any law enforcement agency or any other representative of a local government agency with responsibility for regulating or administering a local ordinance relating to California tour guide businesses, the council shall provide information concerning a certificate holder, including, but not limited to, any of the following:

(1) The current status of a certificate.

(2) Any history of disciplinary actions taken against the certificate holder.

(3) The home and work addresses of the certificate holder.

(4) Any other information in the council's possession that is necessary to verify facts relevant to administering the local ordinance.

(b) The council shall accept information provided by any law enforcement agency or any other representative of a local government agency with responsibility for regulating or administering a local ordinance relating to California tour guide businesses. The council shall have the responsibility to review any information received and take any actions authorized by this chapter that are warranted by that information.

9421. It is an unfair business practice for a person to hold himself or herself out or to use the title of "certified tour guide," "tour guide professional," or any other term such as "licensed," "registered," or "CTG" that implies or suggests that the person is certified as a tour guide professional, unless that person currently holds an active and valid certificate issued by the council pursuant to this chapter.

9423. It is an unfair business practice for any tour guide business to hire tour guides to provide sightseeing in California to paying customers that is not performed by a certified tour guide professional.

9424. Enforcement of the rules and regulations governing certified guides shall be administered by the Public Utilities Commission, which currently issues permits for tour buses.

9425. The superior court of a county where a person acts as a tour guide professional in violation of this chapter may, upon a petition by any person, issue an injunction or other appropriate order restraining the conduct. A proceeding under this section shall

1 be governed by Chapter 3 (commencing with Section 525) of Title  
2 7 of Part 2 of the Code of Civil Procedure.

3 ~~9427. (a) Except as otherwise provided in this section, a~~  
4 ~~certificate holder has the right, consistent with this chapter and the~~  
5 ~~qualifications established by his or her certification, to perform as~~  
6 ~~tour guides in any city, county, or city and county in the State of~~  
7 ~~California and shall not be required to obtain any other license,~~  
8 ~~permit, or other authorization to engage in that practice.~~

9 ~~(b) Notwithstanding any other law, a city, county, or city and~~  
10 ~~county shall not enact or enforce an ordinance that requires a~~  
11 ~~certificate holder to obtain any other license, permit, or other~~  
12 ~~authorization to perform guided tours consistent with the~~  
13 ~~qualifications established by the certificate holder's certification.~~

14 ~~(c) This section does not preclude a city, county, or city and~~  
15 ~~county from requiring a tour guide business or establishment to~~  
16 ~~file copies or provide other evidence of a certificate held by a~~  
17 ~~person providing tour guide services at the business.~~

18 ~~(d) A city, county, or city and county may charge a tour guide~~  
19 ~~and other travel-related business or establishment that uses tour~~  
20 ~~guides for sightseeing a business licensing fee sufficient to cover~~  
21 ~~the costs of the business licensing activities established by a local~~  
22 ~~ordinance pursuant to this section.~~

23 ~~(e) This section does not prohibit a city, county, or city and~~  
24 ~~county from adopting land use and zoning requirements applicable~~  
25 ~~to tour guide and travel-related businesses or establishments that~~  
26 ~~use tour guides for sightseeing, unless those requirements differ~~  
27 ~~from requirements uniformly applied to other professional or~~  
28 ~~personal services businesses.~~

29 ~~(f) This section does not preclude a city, county, or city and~~  
30 ~~county from doing any of the following:~~

31 ~~(1) Requiring an applicant for a business license to operate a~~  
32 ~~tour guide business or establishment to fill out an application that~~  
33 ~~requests relevant information.~~

34 ~~(2) Making reasonable investigations into that information.~~

35 ~~(3) Denying or restricting a business license if the applicant~~  
36 ~~provides materially false information.~~

37 ~~(g) An owner or operator of a tour guide or other travel-related~~  
38 ~~business or establishment subject to subdivision (f) shall be~~  
39 ~~responsible for the conduct of all of the employees or independent~~  
40 ~~contractors working for the business.~~

1     ~~(h) This section does not preclude a city, county, or city and~~  
2     ~~county from authorizing the suspension, revocation, or other~~  
3     ~~restriction of a license or permit issued to a tour guide or other~~  
4     ~~travel-related establishment or business if violations of this chapter~~  
5     ~~or local ordinance occur on the premises of that establishment or~~  
6     ~~business.~~

7     ~~9429. This chapter does not restrict or limit in any way the~~  
8     ~~authority of a city, county, or city and county to adopt a local~~  
9     ~~ordinance governing any person who is not certified pursuant to~~  
10    ~~this chapter.~~

11    ~~9431. This chapter does not affect the rights of any person~~  
12    ~~licensed by the state to practice or perform any functions or services~~  
13    ~~pursuant to that license.~~

14    ~~9433. The Legislature finds and declares that, due to important~~  
15    ~~health, safety, and welfare concerns that affect the entire state,~~  
16    ~~establishing a uniform standard of certification for tour guides~~  
17    ~~upon which consumers may rely to identify individuals who have~~  
18    ~~achieved specified levels of education, training, and skill is a matter~~  
19    ~~of statewide concern and not a municipal affair, as that term is~~  
20    ~~used in Section 5 of Article XI of the California Constitution.~~  
21    ~~Therefore, all cities, counties, and cities and counties, including~~  
22    ~~charter cities and charter counties shall not enact any ordinance~~  
23    ~~or regulation that conflicts with or duplicates the requirements~~  
24    ~~under this chapter.~~

25    ~~9440. This chapter shall remain in effect only until January 1,~~  
26    ~~2018, and as of that date is repealed.~~